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FEDERAL GOVERNMENT AND THE STATES

MOORFIELD STOREY

FEDERAL GOVERNMENT AND THE STATES

Address

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CELEBRATION OF THE ADOPTION OF THE
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Mr. President, Ladies and Gentlemen:

I need not assure you how sincerely I appreciate the honor of being asked to join with you and with the eloquent orator, who will follow me, in celebrating this great event in the history of Virginia. Your Commonwealth and that from which I come stood shoulder to shoulder for long years in the contest for independence and constitutional liberty, and therefore it is appropriate that citizens of both should unite in rejoicing over every important step in that conflict. I thank your President and his associates for giving me this opportunity to meet you and to speak on this occasion.

Our meeting to-day is significant because we are here to commemorate not some great victory on sea or land with its frightful sacrifice of human life, not the birth of some eminent statesman or soldier, nor yet some great discovery which has enlarged the possibilities of human achievement, but simply the enactment of a law,—a fundamental law, which defined the powers of the government and secured the rights of the citizen in this great Commonwealth.

It is a welcome evidence of advancing civilization, a proof that the respect for law which is characteristic of English-speaking men is not yet weakened among us, that events like this are selected for especial honor. Indeed this great celebration, of which to-day is only an episode, is not held because a handful of people landed on an island in the James River and undertook to build a town. Such migrations have been common in all ages of the world, and these immigrants showed no peculiar courage, nor were they actuated by any unusual motive. They came to seek their fortunes, like the many who since their day have come from the Old World to the New. It is because those settlers sowed the seed of the first human government

"conceived in liberty and dedicated to the proposition that all men are created equal," that the new city which surrounds this hall has sprung from the sand, and all the treasures which are exhibited here have been gathered from every corner of this vast country. The battleships and soldiers of all nations who have come to decorate this great occasion are doing homage to a principle whose ultimate triumph will end their usefulness, for, if the equal rights of men are ever fully recognized, the excuse for war will be gone.

It is altogether right that we should celebrate the adoption of a constitution, especially this first American constitution. In the history of liberty there is nothing that so well deserves commemoration, for a constitution has been the prize to attain which generations have striven,—the enduring result of long and desperate struggles for human freedom. Our ancestors fought hard for civil and religious liberty, and, when each victory was won, they wrote a few words in some law or constitution. Those words are the fruit of suffering and sacrifices that have long been forgotten. How many centuries of religious war had passed, how many martyrs had gone to the stake, what rivers of blood had been shed, what tortures had been endured before we wrote in our Constitution the simple words:—

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

How many acts of oppression, how many years of brave resistance were needed, what penalties of imprisonment, mutilation, and death had been inflicted to teach us the importance of the next sentence:—

"or abridging the freedom of speech or of the press."

What years of discord and danger after the Revolution were required to teach our ancestors the wisdom which framed our Constitution, to be the wonder of statesmen ever since.

There is no line in our Bill of Rights which was aimed at an imaginary evil. Every provision was written because men had suffered from the abuse of arbitrary power, and were determined that they and their children should suffer such wrongs no more. The earnest men who made our constitutions had a reason

for every clause, and knew how to prize the safeguards which had been dearly bought. We who were born after their battles were over,—we who have enjoyed the freedom which they secured for us, and to whom it has been as natural as the air we breathe, repeat the words of our Constitution by rote without realizing what they mean. To us they are mere common-places of speech, and we cannot believe that any one would venture to question their wisdom or attack the rights which they assure.

To learn how priceless these trite provisions are, however, we have only to look across the sea and consider the unhappy condition of the Russian patriots, whose lives, whose liberties, whose families, are absolutely at the mercy of the Tsar and his officers. The riots, the assassinations, the mutinies, the famine, the bloodshed, the horrors of every sort, which we witness in Russia to-day, are the price which that unhappy country is paying to win just such a constitution as we possess.

We ourselves have not forgotten, and never can forget the hundreds of thousands of precious lives that were spent in order that there might be written in our constitution, "Neither slavery nor involuntary servitude except as a punishment for crime shall exist within the United States or any place subject to their jurisdiction." Wisely, therefore, do we celebrate anniversaries like these, that we may renew our allegiance to the great principles of constitutional liberty, and resolve that what cost our ancestors so dear shall not lightly be sacrificed by us.

It is natural that we should be dazzled by the wonderful growth which has sprung from the seed planted at Jamestown, that we should be intoxicated by a material prosperity unexampled in the history of the world, and by the evidences of enormous national wealth and strength which surround us, but we shall lose the whole meaning of this celebration—we shall fail completely to learn its lesson—if we give ourselves up to the contemplation of our past and the glorification of ourselves. We are here to honor those who laid deep and strong the foundations of our Commonwealth, because we know that to the principles which they adopted in framing our government we

owe the liberty that has made our wonderful progress possible. But, as we meet to commemorate their acts, it becomes us to inquire how their work is faring in our hands, how we are preserving and maintaining the heritage of principle which they handed down to us. The past is indeed glorious, but we are living in the present, and on our course in that present depends our country's future.

No observer of current events can close his eyes to the fact that within the last eight years a strong tendency has developed to increase the power of the Federal government at the expense of the States, and in the Federal government to increase the power of the executive at the expense of the legislative and judicial departments. It is, perhaps, one manifestation of the larger tendency to seek private advantage from governmental action of which the protective tariff is the most conspicuous illustration. It is natural that those who would exercise power or profit by it should chafe at the checks and restraints imposed by a constitution and seek to set them aside in order to reach their ends more promptly.

This tendency, if not checked, can result only in taking power from the people as a whole and giving it to those whom we are wont to call, and who call themselves, "the people's servants," and we must consider carefully what these changes mean before we yield to those who urge them. We may concede perhaps that some of the powers now exercised by the States should be curtailed. We may admit, for example, that the national government should have all the powers which are necessary to execute the treaties which it is authorized to make. When a missionary is ill-treated by a Chinese mob, we insist that the Chinese government shall punish the offenders, but, when an American mob murders inoffensive Chinamen at Rock Springs or hangs Italians in New Orleans, we answer a like demand from the Chinese or the Italian government by saying that the guilty persons are within the control of the States, and that the United States cannot reach them. This should not be, and for the general good the States should not have the power to limit or deny rights secured to foreigners by

treaty with our government. The exclusion of a few Japanese children from a San Francisco school might, in some circumstances, cause this whole nation the most serious trouble, and, where the interests of the nation are involved, the nation should have power to protect or assert them.

It would be possible, perhaps, to suggest other respects in which a redistribution of power might properly be made, but, if our frame of government is to be changed, let it be done after full discussion and thorough understanding by the whole people. A constitution which has carried us through foreign wars and domestic insurrections, which has stood the test of a great civil war and a contested presidential election, which for more than a hundred years has proved adequate to meet every emergency that has arisen, may be trusted a little longer. There is no great exigency which requires a sudden change. When we act, let us act deliberately, remembering that the change is not for to-day, but for years, perhaps even for centuries; that it is not to increase the power of one President or one Congress, but of all Presidents and all Congresses,—of Republicans, Democrats, and Socialists alike; that we are giving the power to do mischief as well as to do good; that, if capital controls the government, the new power may be used to oppress labor, while, if a representative of labor becomes our chief magistrate, the interests of capital may fare ill at his hands. These are among the considerations which we must weigh before we change our Constitution.

We must remember, at the outset, that ours is "a government of the people *by* the people," and, whatever form is adopted, it is efficient only as it makes the expression of the people's will easy and effectual. The people's concerns are varied. They extend from clean streets, cheap gas, proper irrigation, and other matters of purely local interest, to war and foreign affairs. Some of these are best dealt with by portions of the people like towns, counties, or States, others by the people as a whole, but it is always the people who govern, and they govern through agents. The only direct part in the government which the people themselves take is in the election of these agents. We

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general government creates the local governments and reserves their powers, and may, therefore, change or revoke the powers at will. In the United States the States existed before the Federal government, and derive no authority from the Federal government, but each has the limited powers granted to it by the Constitution, and which cannot, therefore, under the Constitution, be changed or abridged by the Federal government. The difference is historical and fundamental, and, to avoid any possible doubt on this point, the Tenth Amendment to the Constitution was adopted, which reads: "The powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States respectively or to the people."

The question, therefore, is whether the people of the United States wish to change the manner in which they exercise their own powers, whether they wish to do less through local governments and more through the general government, and whether such change can lawfully be made only by the people through amendment to the Constitution. If this change is desirable, it must be because the agents selected by the people, when acting as a whole, carry out the people's will more promptly and more efficiently than the agents whom they select, when acting in States or cities. Is this the case?

In considering this question, we must not forget that the transfer of power to the Federal government is one thing, the transfer of power to the President a wholly different thing. The Federal government means the President, Congress, and the executive officers appointed under the law, subject to the control of the Federal courts within their province. Has this government proved, on the whole, more efficient, more responsive to the people, than the government of the States? This is the first inquiry, and in dealing with it we should remember that the national government does not always, nor perhaps often, represent the majority of the people. How frequently has the President of the United States been elected by a minority of the votes cast at the election? In how many cases since the Republican party was formed has the President been Republi-

do not change the people by changing their methods of choosing their agents or changing the distribution of power among those agents. The same man on the same ticket votes for president, governor, mayor, sheriff, representative, and many other agents. They are different, but the man is the same. If the majority of these voters really desire a thing, their various agents will be made to feel this desire, and will either try to accomplish it or be displaced. If some of these agents do not do what other agents think they should do, it is because the people so will it, not because the agents are thwarting the people's will.

The theory of our government is stated admirably by Mr. Lincoln in these words:—

“The legitimate object of government is to do for a community of people whatever they need to have done, but cannot do at all, or cannot do so well, for themselves in their separate and individual capacities. In all that the people can individually do as well for themselves government ought not to interfere.

“I am for the people of the whole nation doing as they please in all matters which concern the whole nation, for those of each part doing just as they choose in all matters which concern no other part, and for each individual doing just as he chooses in matters which concern nobody else.

“I think a definition of ‘popular sovereignty,’ in the abstract, would be this: that each man shall do precisely what he pleases with himself, and with those things that exclusively concern him; . . . that a general government shall do all those things which pertain to it, and all the local governments shall do precisely as they please in respect to matters which exclusively concern them.”

Local self-government has been called “the germinal idea of Anglo-Saxon polity,” and is of unknown antiquity. Its leading principle is that, “where the law is administered, the law is made.” Were all local divisions obliterated in this country to-morrow, we should, in framing a new system, establish new local governments, and confide to each the management of its own local affairs. In many countries, as in our own States,

the general government creates the local governments and defines their powers, and may, therefore, change or revoke those powers at will. In the United States the States existed first, and derive no authority from the Federal government, which has the limited powers granted to it by the Constitution and no others, and which cannot, therefore, under the Constitution, change or abridge the powers reserved to the States. This difference is historical and fundamental, and, to avoid any possible doubt on this point, the Tenth Amendment to the Constitution was adopted, which reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

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can and the House of Representatives controlled by a Democratic majority? In such a case which represents the people? How often has the majority in the House of Representatives been wholly out of proportion to the majority at the polls? How often has a small majority in Congress increased its power by unseating its opponents?

In 1860 Mr. Lincoln was elected by forty per cent. of the voters, and the Republicans had sixty per cent. of the representatives chosen to the House.

In 1876 Mr. Hayes received forty-eight per cent. of the popular vote, while Mr. Tilden received fifty-one, and the Democrats controlled the House of Representatives.

In 1888 Mr. Harrison received fewer votes than Mr. Cleveland by more than one hundred thousand, but Mr. Harrison was elected, and the Republicans controlled the House.

In 1892 Mr. Cleveland received only forty-five per cent. of the popular vote, but sixty-two per cent. of the electoral votes, and his party had a very large majority in the House.

These illustrations might be multiplied indefinitely. Do such figures show that the result of Federal elections expresses the people's will?

How often have the Senate and the House been controlled by different parties, so that no legislation on burning questions was possible? When the Wilson tariff bill was so amended in the Senate that President Cleveland, just elected by an enormous majority in the Electoral College, refused to sign it, how well did the Federal government represent and execute the wish of the people? When we propose to give our Federal agents more power, is it not well to consider whether we can be sure that these agents will respect our will, and not use their power to defeat it? Agents whom the people cannot control, agents who represent a minority, are not safe repositories of power in a government by the people.

Let us press our inquiry a little further, and consider the separate bodies which make up the Federal government. The only persons for whom the citizen votes directly, the immediate representatives of the people, are the members of the House

of Representatives, the popular branch of the government, the so-called "grand inquest of the nation." These representatives come fresh from their constituents directly charged with the presentation of their views and the execution of their wishes. The time was when the debates in the House were largely effective in forming public opinion, and to secure absolute freedom of speech to the members of Congress, the Constitution expressly provides that "for any speech or debate in either House they shall not be questioned in any other place." The House of Representatives is modelled on the House of Commons, and both choose their Speaker, whose duty it is to preside over their deliberations and preserve order. He was intended to be an absolutely impartial officer, debarred even from taking part in the debates unless he left the chair, and, therefore, not to be a partisan leader.

On the memorable occasion when the King of England came into the House of Commons and asked the Speaker, Lenthall, whether the five members whom he wished to arrest were present, the Speaker answered:—

"May it please your Majesty, I have neither eyes to see nor tongue to speak in this place but as the House is pleased to direct me, whose servant I am here; and I humbly beg your Majesty's pardon that I cannot give any other answer than this to what your Majesty is pleased to demand of me."

To-day, in this country, the position of House and Speaker is reversed, and the House might say with truth, "We have neither eyes to see nor tongues to speak in this place but as the Speaker is pleased to direct us whose servants we are here." The servant of the House is to-day its master, and he is called "the second person in the government," because he wields a power second only to that of the President. No longer impartial, he is the leader of the majority party. It is he who appoints the Committees, who with his lieutenants constitutes the Committee on Rules and determines what the House shall consider and what not, how long a debate shall last, who shall speak, and what laws shall pass. With these powers he is practically the House of Representatives,

but he does not represent the people of the United States. They do not elect him, nor are they in any way consulted as to who shall fill the office. The Speaker may represent a majority of his party, but, unless that party is singularly unanimous or the opposition party ridiculously small, he must often represent only a minority of the House, and very likely a smaller minority of the people. A representative may come to express the unanimous demand of his district, but, if the Speaker does not approve what he wishes to say, the representative may never get the chance to speak, and his constituents may thus practically be disfranchised.

When the important power of taxation is to be exercised and a committee of the House is chosen to frame a tariff bill, the members who represent the majority alone meet to consider it, and the minority are excluded from their deliberations. If, for example, the committee consists of twelve Republicans and eight Democrats the twelve Republicans frame the bill and a majority of seven may insert provisions which the other five Republicans and the eight Democrats, together representing a majority of the whole House, do not approve. Under our party system the seven votes control the thirteen, and a small minority of one party taxes the whole people. The Speaker appoints this committee, and may select it according to his own views. He may choose majority and minority alike, and exclude from both the representatives of opinions which differ from his own, and he may thus practically shape the whole scheme of taxation. He determines how long the bill shall be debated and what amendments shall be offered. This is done through the Committee on Rules, perhaps, in form, but he makes that committee. His power to recognize or not recognize gives him dominant power over the votes of members who depend on recognition for the chance to win distinction or to obtain consideration for measures which they must pass in order to secure re-election. His power is irresponsible, almost despotic. Can we say that a system which gives this power to a person not selected by the people insures the direct and effective execution of the people's will? Is this popular government, and

can we safely intrust an officer so chosen with greater power than he now has over our property and our business?

Is the Senate a more efficient interpreter of the popular will? How much are the people consulted in the choice of senators? Is it mere accident that so many of them are conspicuous mainly for their wealth and the qualities by which wealth is acquired? If we turn to the West, shall we say that Senator Clark was chosen by Montana for his ability as a statesman, or, if we look nearer home, must we assume that Senators Platt and Depew represent the character and purpose of New York? Was Quay the free choice of Pennsylvania, or Dryden of New Jersey? If Addicks had won his desperate campaign in Delaware, would he have represented men or dollars, or would he have been improperly associated with such a colleague as Burton of Kansas? One might prolong the mortifying catalogue, but we are not dealing now with the character of the senators as men: the question is whether they are sent there by the people, and whether they represent the people fairly.

When after the passage of the McKinley bill the people rose against the party which enacted it and elected a Democratic House, an eminent Republican senator said to me that the issue of tariff reform would not be pressed, as the Senate was so strongly Republican that it could not easily be changed, and the people would not persist in a hopeless struggle. He was not respecting the will of the people but intending to defeat it, yet he was an entirely honorable man. He felt that it was the duty of the Senate to protect the permanent interests of the country against hasty popular action, and the framers of the Constitution undoubtedly intended that the Senate should exercise this function. No thoughtful citizen of any State, if he considers the question, will fail to confess that, however valuable and important the Senate of the United States is as a check or balance, it is not immediately affected by public opinion, and it is sometimes easier to say what private interests a senator represents than to specify the public interest which

he has at heart. Surely, the Senate has now all the power which can safely be intrusted to it.

If we turn to the President, his constitutional powers are limited. He is bound "to protect and defend the Constitution of the United States" and to "take care that the laws be faithfully executed." He is commander-in-chief of the army and navy; he has the power to appoint most of the Federal officers, subject to the consent of the Senate; he may with like consent make treaties; and he may recommend to the consideration of Congress "such measures as he shall judge necessary and expedient." This is all the power that the Constitution gives him. He has no power to legislate, and is charged with no responsibility for legislation except such as comes from his power to veto. He is not to make laws, but to execute them; not to change the Constitution, but to "protect and defend" it. Yet to-day he exercises a greater power than the ruler of any country in Europe save perhaps the Tsar of Russia or the Emperor of Germany. The President appoints every important Federal officer. The King of England has no considerable patronage. The officers of state, the judges of the courts, the ambassadors, are all appointed by his ministers. The President appoints his cabinet officers, in whom is vested the control of the great departments, and changes them at his pleasure. The King's ministers are selected by the party which controls the House of Commons. The President has a policy, and uses all the power of his office to force it through Congress. The King has no policy, and his ministers do not control the House of Commons, but hold their power only while the House of Commons chooses.

To take some illustrations from recent experience, the President by executive order enlarged the pension roll; promoted the revolution in Panama, and insured its success by despatching ships and troops to resist the lawful government; intervened in the affairs of San Domingo; appointed a governor of Cuba and sent our troops into that island to uphold him, without the least authority of law and without consulting Congress. Neither the King of England nor the Presi-

dent of France could have done either of these things. President McKinley assumed sovereignty over the Philippine Islands months before the treaty with Spain was ratified, and when this country had absolutely no right to them. The King could not have done this. The people of the United States had expressed no wish on either of these matters. Neither they nor their representatives had voted to increase the pension roll, to take territory for the Panama Canal, to buy the Philippine Islands, to become involved in the affairs of San Domingo, or to undertake the government of Cuba. Whatever power the Federal government had in either case, it was not vested in the President, and his action was entirely outside his powers.

Leaving out of view these instances which are cited to show at once what power the President exercises and how power has been exercised without warrant of law, a practice has grown up of using the legitimate powers of the President to influence, if not to control, legislation by Congress. More than one President, not content with recommending to Congress what he has deemed expedient, has undertaken to force the adoption of his recommendations upon Congress. The patronage which the President controls, the favors social and other which he can confer, have been employed freely in aid of the President's purpose. He can often make or mar the career of an ambitious man. In a contest with the President the most powerful senator can rarely prevail. Charles Sumner and Roscoe Conkling were in their time leaders of the Senate, but General Grant deposed Mr. Sumner from the position he had filled for years as chairman of the Committee on Foreign Relations, and President Garfield drove Mr. Conkling from public life. More modern instances might be suggested. The President can open to his friends the avenues to preferment and honor: he can close them to his enemies. The newspaper correspondent who upholds the Administration can get many desirable things which are denied to one who tells the unpalatable truth. No one who knows Washington can in his heart deny that these statements are correct. The evidence is abundant and convincing.

The officer who in practice has such powers as these, who controls the vast patronage of the United States, who exercises such influence over the legislature and the press, who enjoys the rare advantage of having what he says printed in every journal from one end of the country to the other while his opponents get no such hearing, who is so dominant in dealing with foreign nations, who, moreover, is in office for four years with great opportunities to secure his own re-election, has all the power which is compatible with popular government. He has more than is given to any single man in any free government on earth, and we shall do well to remember this before we give him more. We should remember also that the power which Mr. Roosevelt exercises this year may be exercised a few years hence by Mr. Hearst or some man selected in the dying hours of a convention as a candidate for Vice-President "to balance the ticket." We are dealing with the office, not the man.

May we not also properly inquire how well the Federal government has done the work already intrusted to it? I will not speak of Whiskey Rings, Star Route Rings, Navy Rings, nor even of the fraud and corruption which have marked our dealings with the Indians for a century, since those are matters of less recent history. Let us come to the questions of to-day.

We are urged to give the Federal government great powers of supervision and regulation. How have such powers been exercised in the past? The Treasury Department has had the power to examine National Banks since they were established. How often has the failure of a bank disclosed a rottenness existing for years, which the examiners never discovered or failed to correct? How many insolvent banks have been permitted to continue in business? Many bank failures that have occurred would have been impossible, had our system of examination been adequate. The Treasury Department is also charged with the duty of inspecting steamships and their appliances, that travellers by water may make their voyages in safety. The loss of the "General Slocum" a few years ago, with its awful sacrifice of life, showed how this duty was performed.

It is not long since the persistence of a private citizen against the vigorous opposition of the Postmaster-General uncovered wide-spread and long-continued corruption in the Post-office Department. Why was that Postmaster-General appointed? He had been a successful campaign manager, and he was placed in charge of the department which had the greatest patronage. Why? Whatever the motive, he was an obstacle, not an aid, to the efficient and honest administration of his office. He was active in making the treaty which gave the brazen adventurer, Addicks, half the patronage of Delaware to aid him in his attempt to buy the senatorship. Perhaps his attention was in this way diverted from the dishonesty in his own department. Have we forgotten the corrupt combinations between Congressmen and the officers of the Post-office Department which were then disclosed?

In the Agricultural Department we have found that the persons charged with the important duty of making true reports as to the state of our crops were selling this information. A recent trial has disclosed the facts, and shown what profits one dishonest official reaped.

The Secretary of the Interior has discovered systematic frauds in the administration of the public lands, in which high Federal officials and senators of the United States were involved.

The War Department during the war with Spain proved unable to keep in reasonable health men who never left this country. We have not forgotten the camps at Chickamauga and elsewhere, the difficulties of transportation and commissariat, the scandals attending appointments and contracts, or the hospitals at Montauk, and the President perhaps remembers the round-robin from our officers in Cuba.

It may be said that these are accidental shortcomings of men inevitable under any system, but, when we are considering whether it is wise to give the Federal government a larger control of our affairs, we may well ask what manner of men will be selected to exercise that power, and may judge the future by the past. If the national government has not been faithful over few things, why make it ruler over many things? We know

that these abuses have been due not to individuals, but to the system which selects officials for party service, not for fitness, and which too often subjects them to political influence in the discharge of their duty. Political appointees have not made efficient officers.

Let us now discuss the question on the very ground selected by those who ask for more power. They claim that it is needed to resist the great aggregations of capital,—to regulate the railroads and control the trusts. What is the record of the Federal government on these matters?

The combinations of capital known as trusts were formed to stifle competition, and are prosperous because they succeed in this attempt. They prevent competition at home by agreement among the competitors, but this agreement would be idle if competition could come from abroad. What protects them from this? The tariff, which has well been called "the mother of trusts." The power of taxation, confided to the Federal government in order that it might raise money for public purposes, has been used to build up a wall which excludes foreign competition, and enables our manufacturers at home to charge their fellow-citizens what they please for goods which we need. The necessities of life, like lumber and coal, the raw materials for our manufactures, like iron, wool, hides and countless other objects, are now subject to higher duties, when our combined manufacturers have become a menace to the State, than were dreamt of when our manufactures were in their infancy;—far higher than were levied when our needs were greatest at the height of the Civil War. The people of the United States, for whose alleged benefit these duties are imposed, pay higher prices for goods which are made at their doors than the makers charge foreigners for the same goods delivered thousands of miles away in Europe or Australia. This is protection indeed, but not protection to the people of the United States. It is protection to the trusts *against* the people of the United States.

The President denounces the trusts, and asks for new laws and new powers. There is power enough now, but he does not even recommend that it be used. What we need is lower duties.

What we need is to level the wall which protects the trusts, which indeed makes them possible. Why is it that the Federal power is exerted to shield the very abuses which the Executive seems so anxious to uproot? Why is it that the President, whose ideas on most subjects are accessible to his countrymen, has preserved such an absolute silence on the burning question of tariff reform, and has, indeed, displayed such fierce indignation at the mere statement that he had expressed himself on the subject? It is because he fears that any action in this direction will divide his party. It is because the Republican party owes its power, in large part at least, to the support of the manufacturers, and depends for the sinews of war on the "fat fried out of" them, to use the phrase of one who was high in the party councils. The politicians and the protected interests have formed an unhallowed partnership, to which the manufacturers have contributed cash in the guise of campaign contributions and the politicians have contributed time and speeches. The manufacturers take as their share of the profits the right to tax their fellow-citizens through tariff provisions, and thus get back their money many times. The politicians get offices and honors and the power to pass or repeal tariffs, by which they compel further contributions. To the interests of this partnership its members have been thoroughly loyal, and hence it is that in the midst of his fierce campaign against trusts neither the President nor any other Republican leader has urged the use of the most efficient weapon which exists,—a weapon which lies ready for their hands, which can be used at will without amending the Constitution or taking power from the States, and which is absolutely unerring. The Constitution as it is gives all the power that is needed to control the trusts.

How is it with railroads? Quite recently the investigation of a great railroad seemed likely to expose the record of a Cabinet officer. The President, unwilling that his Attorney-General should conduct a matter where the discharge of his duty might bring him into conflict with an associate in the Cabinet, placed the matter in the hands of eminent counsel selected for their

character and ability. They assumed the duty and presently recommended proceedings against the Cabinet officer which should show the exact truth. They had been appointed precisely because some such proceedings seemed likely to be demanded in the interests of justice, but, when the expected happened, these eminent lawyers were discharged, and the accused officer was protected by the President's order, upon the strange theory that the corporation, which is a name, not the man who does the criminal act, is responsible under the law. This case, at least, shows how possible it is, even under the Federal government, for personal favor to stay the arm of justice and protect the culprit.

Some forty years ago the United States created several corporations to build the first transcontinental road. These were the creatures of Congress, and wholly within the power of the Federal government. Did that government control them, or did they control the government? Let the record of the *Crédit Mobilier* investigation answer, which drove into private life the Vice-President of the United States and stained the fame of many men almost equally prominent.

A few years later, while the echoes of that scandal were fresh in our ears, the Speaker of the House was found to have used his power in aid of a land grant road, and to have asked and received compensation for his acts. The brilliant career of James G. Blaine ended in bitter disappointment and disgrace, and his downfall shows how dangerous must be the connection between the government and great corporations.

Shall we, with these examples before us, take from the States any power which they now have, and delude ourselves into the belief that the Federal government, now so largely elected and controlled by the trusts which are the children of the tariff, can be relied upon to regulate them effectively? Can we hope that the Federal power will be used to control the railroads, when we remember Colfax and Blaine?

Let me remind you that some years ago the great Life Insurance Companies, represented in the Senate by Mr. Dryden, president of the Prudential Life Insurance Company, tried to

change the law as laid down by the Supreme Court, and to have Congress declare that the business of life insurance is interstate commerce. Their purpose was to rid themselves of State supervision and to substitute Federal control. They wanted power in one or, at most, in a few hands. The people learned soon afterwards how these great companies were managed. Can any one believe that they were aiming at more efficient supervision?

Every citizen knows that the gravest danger to which our institutions are exposed comes from the influence of money upon our legislative and executive officers. This is the period of "Graft," and from San Francisco to New York and Philadelphia comes the same sad tale of corruption. Any change in our government which puts the power over great aggregations of capital into the hands of a few men—the Speaker of the House, the members of a Senate or House Committee, a Secretary or Under Secretary, or even a President—is fraught with grave danger, especially where what these capitalists want is inaction, the non-enforcement of a law, the overlooking of an evil practice, rather than action,—when all that they ask is "to be let alone." If railroad interests are attacked, the whole railroad capital of the country on the one side is enlisted against a few men on the other. The power of temptation is increased, the difficulty of placing the responsibility for neglect or non-action, and so of reaching the culprit, is enhanced, the power of resistance is diminished. Is it not safer to have more guardians of the public rather than fewer, and guardians who can be more easily watched and more quickly reached? In General Jackson's time it was feared that the Bank of the United States would exercise an undue influence upon the national government, and in the light of our experience since it is impossible to say that this fear was not justified. To-day the manufacturing capital of the country is powerful enough to maintain for years an unjust and extortionate tariff, to which more than to any other cause are due the enormous fortunes which now alarm us. Can we believe that the capital invested in railroads will prove less powerful?

The recent difference between the President and Mr. Harri-

man is very instructive, and we need not decide the issue of veracity between them to appreciate its lesson. We may take Mr. Harriman, for the purpose of the argument, as being all that the President has since called him. In any view of the case he is certainly an extreme representative of modern railroad combinations, and has been known as such for years. To him, less than a month before his last election the President wrote, asking him to see him "in view of the trouble over the State election in New York." It was Mr. Harriman to whom he wrote, "You and I are practical men," and to whom he said, "Before I write my message, I shall get you to come down to discuss certain government matters not connected with the campaign." There seems to be no doubt that Mr. Harriman raised \$200,000, "with the result," as he states, "that at least 50,000 votes were turned in the city of New York alone, making a difference of 100,000 votes in the general result." Mr. Harriman says that the President asked him to raise this money. The President says: "I never requested Mr. Harriman to raise a dollar for the presidential campaign of 1904. On the contrary, our communications as regards the campaign related exclusively to the fight being made against Mr. Higgins, for governor of New York." After the election, Mr. Harriman, as a "practical man," recalling the President's desire to consult him before sending his annual message asked to see what he was going to say about the "Interstate Commerce Commission and what the attitude of the railroads should be towards it." The President in a letter addressed to "My dear Harriman" declined to let him see his message, and said it was not on this subject that he had wished to consult him. To which Mr. Harriman replied, "It was natural for me to suppose that railroad matters would be included in any discussion which you and I might have before writing your message," and no one will question that Mr. Harriman might naturally make this assumption. I allude to this unhappy episode not to discuss the issue between the President and Mr. Harriman, but to emphasize the danger which must exist, when a man who can change 50,000 votes at a critical moment in a critical State and so elect or defeat a President, is liable to

be enriched or ruined by the President whose future is in his hands. Such a man (and such men are always "practical") is not likely to forget his own pecuniary interests or often to put an opponent of those interests in a position to injure him. In most cases he will know what he is getting before he pays his money. Wisely, therefore, did Mr. Bryce in a recent address advise us that "we should aim to bring as few financial interests as possible within the sphere of governmental activity."

Is it not quite possible that the trusts and the railroads combined may some time elect a President and Congress to exercise in their favor the very powers which are demanded now in order to curb them? Capital has before now carried a Presidential election. Let us hesitate before we strengthen officers who may so easily be chosen by the very interests that we wish to control.

Have the States proved unfit depositories of power, or, to state the proposition more accurately, have the people in voting for State officers shown less wisdom and honesty than in choosing the officers of the Federal government? Experience does not sustain this contention. In the first place, the smaller community with its identity of interests is more easily dealt with than the whole nation. A man who is entitled to lead can get the ear of his neighbors, when the whole country knows nothing of him. We weigh men by their reputations at home, and, unless a man brings the indorsement of his own State, he can have little influence in the councils of the nation. It has been found in practice that a reform can be carried in one State with comparative ease, and that the example of that State will be followed by others, when to persuade all the States at once would be almost impossible. It was through the States acting independently that the Australian ballot, the Torrens system of registering the title to lands, and other like reforms have been adopted. How severely the States can deal with great corporations is shown by the "Public Utilities bill," just enacted in New York. In my own State public service corporations are controlled effectively.

Reform movements have revolutionized State governments without disturbing the hold of ancient abuse on the Federal government. Thus Pennsylvania's fight for life against corruption elected a State treasurer, but left Senator Penrose in office, and did not disturb the horde of Federal officials whose whole influence during the campaign was exerted against reform. New York has chosen Governor Hughes and defeated the Republican "machine," but Senators Platt and Depew, the creatures of that machine, look down complacently upon the storm which does not reach them. Who represents best the people of Pennsylvania, Governor Stuart or Senator Penrose? Who represents best the people of New York, Governor Hughes or Senator Platt?

The people of a State deal more directly and promptly with important questions which concern them than the people of the nation possibly can. It necessarily takes longer to move eighty millions of people with widely divergent interests than it does to move the people of any single State, and the smaller the unit, the more intelligent and direct will be its action. Let us not lightly throw away the benefits which the independence of the States now assures us. Their prompter initiative and their intelligent conservatism are both needed.

From the States we have had very lately a most useful object-lesson in government. Governor Hughes has shown us how an executive can accomplish great results without in the least degree overstepping the legitimate bounds of his authority. Men may differ as to the merits of the laws which have been passed, but there should be no difference among honest men as to his methods. He recommended to the legislature of New York certain very important measures to which the leaders of his own party were strenuously opposed. He was responsible for those measures as clearly as ever was the President of the United States for any recommended by him. To use the current phrase, they constituted "his policy" as much as the laws urged by President Roosevelt embodied his policy. But Governor Hughes recognized that to call them "his measures" was a misapprehension of his whole relation to the State. They were the

people's measures, and it was for the people, if they approved them, to see that they were passed. Governor Hughes, therefore, refused to trade with the opposing politicians. He did not try to buy them with offices or bully them by threats. He is said even to have refused the assistance of the national administration. He made his appeal directly to the people of New York. He explained his recommendations to them and let them fully understand the situation, and the people came to his aid with the inevitable result. His triumph is peculiarly gratifying to every believer in the theory of our government, and he has set an example which every President should imitate.

Charged as he is with the duty only of recommending legislation, let the President always remember that the measures which he advises are not his, but the people's. If his recommendations are wise, the people will approve them and force their adoption. If they do not support them, it is because they do not approve them. Let him realize that he is in office not to win a personal victory nor to increase his personal prestige, but simply to serve his country. Let him, therefore, use the power of appointment, which he holds in trust to secure efficient public servants, solely for that end and not employ it to buy votes for any measure or any candidate. Content to discharge the duties confided to him by the Constitution, let him refrain from attempting to influence Congress or the courts by fear or favor. This is no part of the President's duty, and action of this kind is unlawful. Let him, like Governor Hughes, trust the people and call them to his aid, explain to them the reasons for the laws which he advises, and let them deal with their representatives. It is their business, not his, that he is doing, and the experience of Governor Hughes shows that they can be trusted to see that it is done.

The States have been the nurseries in which the leaders of the nation have been trained. The great statesmen of the Revolution, Washington, Adams, Jefferson, and their great successors, Lincoln, Seward, Cleveland, and a host of others, won eminence in their States, and therefore were called to govern the nation. President Roosevelt himself holds his high office because he was

the Governor of New York. Governor Hughes looms large upon the horizon of the next campaign because he has shown his ability as the chief magistrate of a State. Everything that takes away from the power of the State impairs its value as a training school for the rulers of the nation, and impairs the value to the people of those elections in which their influence is most intelligently exerted and most directly felt by their agents.

The suggestions which I have made may or may not seem sound to you. I have been discussing a question which is open to debate, and there may well be much to say on the other side. But there is a far more important question, which underlies the whole discussion and upon which men should not differ. It may be that the distribution of powers under our government should be changed, but that change should be made by the people according to law, and not by any man or set of men in violation of law. No one can question the right of the people to increase the power of the Federal government or the power of the President in that government by proper amendment to the Constitution, but men in high office propose to accomplish this by methods which are nothing more nor less than usurpation.

In a recent speech the Secretary of State, in advocating the control of corporations, said: "It may be that such control could better be exercised in particular instances by the governments of the States, but the people will have the control they need either from the State or from the national government, and, if the States fail to furnish it in due measure, sooner or later constructions of the Constitution will be found to vest the power where it will be exercised,—in the general government." What does this statement mean? Mr. Root is dealing with cases where he concedes that the power to control is now in the States, and where it can "better be exercised" by them, yet he threatens that in these cases the power will be taken from them by construction if "the States fail to furnish control in due measure." This means that, if the people of the States, acting through the officers elected by them, have done what they think proper to give "due control," but an officer of the Federal government does not like their work, that officer will exercise the power of the people with-

out consulting them. Who is to say whether the acts of the State do or do not constitute "due control"? The people of the State or Secretary Root? If the people of the State are not satisfied, it is always in their power to choose new legislators and pass proper laws. If they want more control, they have only to say so. If the people of the United States are not content, they are all the people of States, and if the people, as a whole, wish anything done which the States have power to do, it is inconceivable that the States should not do it, for the people are the States and what the people wish the people do. If a few States stand against the wishes of the nation, the people can change their constitution, and by such change establish any control they think "due."

The control which "the people need" according to Mr. Root (and the word "need" is inauspicious) is not, then, a control, which they desire, or they would have it. Therefore, the resort to new "constructions of the Constitution" is had because the President or other "servants of the people" are not satisfied with what the people have done, but wish to do what the people have not done, and, in order to get the power, take it by new constructions of the Constitution instead of ascertaining whether the people wish to part with it by suggesting an amendment to the Constitution and letting the people decide. Can you have a clearer case of usurpation? Here is a power admittedly belonging to the people, and of which they can legally be deprived only by their own consent. The essence of power is the right to exercise it when and as the possessor, in this case the people, sees fit. An agent of the people assumes to substitute his judgment for theirs as to whether their power has been exercised properly, and, if he disagrees with them, proposes to change the Constitution by declaring that it means what it is admitted that it does not mean, and so appropriating the people's power to use as he chooses. It is marvellous that an eminent lawyer should have the audacity to suggest so monstrous a violation of the fundamental law upon which this government rests.

The President goes further. He said at Harrisburg:—

"We need through executive action, through legislative, and through judicial interpretation and construction of law to increase the power of the Federal government. If *we fail thus* to increase it, *we* show our impotence."

To *increase* the power of the Federal government "through executive action" is patent usurpation of powers not granted. If they *are* granted, to exercise them is to *use*, not to "*increase* the power of the Federal government." To *increase* constitutional power *by executive action* means to use a power not granted, and this is a deliberate violation of law. This is to substitute the personal opinion of the President for the law and the judgment of Congress, and this declaration means that the President may do what he thinks right as occasion arises, whether he has the lawful power to do it or not. This is not constitutional government, but pure despotism. How would these words have sounded in the mouths of Aaron Burr or Andrew Johnson? Yet if uttered by them, they would not have been dangerous. It is precisely because the people have such confidence in the President's high purpose and trust him so implicitly that such propositions coming from him are full of danger. A trusted and popular man may set a very bad precedent where an ordinary man would fail, but the precedent remains to plague us and to justify the acts of worse successors.

An attempt to increase the Federal power of the government by legislative action is hardly less perilous, though, if we are to have usurpation, it is more in accord with the genius of our institutions to have it come through the action of the legislature, whose duty it is to make the law, rather than through the action of the President, whose duty it is to obey and execute it. If we are to change the fundamental law, let it be done at least under the forms of law and by the representatives of the people, and not in admitted and audacious violation of law.

To increase the Federal power "through judicial interpretation and construction of law" is only a more subtle and, therefore, more dangerous form of executive usurpation. The function of the judiciary is to declare what the law is, not to change it or to make it. The decision of a Court has weight only when

it is the deliberate judgment of able and impartial men selected on account of their character, knowledge, and ability, and striving only to decide what the law is. If their decision is made with any other purpose, if they are seeking to increase the power of the government and their decision is a device to accomplish that object, it is not only entitled to no weight, but the judges who make it are unfit to hold their offices. The President has the power of appointing all Federal judges. The Senate may reject the nomination, but only the President can appoint. He holds in his hands the power to reward a judge who decides as he wishes by promoting him, and he can punish one who decides otherwise by refusing promotion. These are dangerous powers in the hands of an unscrupulous or self-willed man. When, therefore, we find a President publicly denouncing judges whose opinions do not please him, and selecting for high preferment men who share or reflect his own views, when we find him declaring that it is the duty of men whom he has appointed or may appoint to increase his powers, or, in plain English, to give him powers which he does not now possess by judicial interpretation, we should be blind if we did not recognize the danger of the situation, and we should be cowardly if we did not lift our voices in vigorous and indignant protest against such contentions, however honest may be the man who thus threatens our judicial system. We cannot permit all future Presidents so to deal with the courts.

The President says that "*we* show our impotence" if "*we* fail to increase" the power of the Federal government "through executive action," and "legislative and judicial interpretation." What does "*we*" mean? Not the people of the United States. The people can vote, but they are incapable either of "executive action" or of "legislative and judicial interpretation." The people exercise neither executive, legislative, nor judicial power. As only the President, the Federal judges, and Congress are at once able and likely to increase the Federal power by these methods, "*we*" means the various Federal officers, who thus by the supreme Executive of the nation are bidden to usurp powers which they do not possess, and denounced as "impotent"

if they fail. This is not the language of a constitutional ruler.

Against these theories by which our rulers of to-day seem to claim for themselves peculiar wisdom let us oppose the words of Washington, that greatest of Virginians, in his Farewell Address:—

“If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation, for, though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed.”

Let us oppose the language of the Supreme Court whose unanimous opinion has just been expressed in these words:—

“The proposition that there are legislative powers affecting the nation as a whole which belong to, although not expressed in, the grant of powers, is in direct conflict with the doctrine that this is a Government of enumerated powers. . . . This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment.

“This amendment, which was seemingly adopted with prescience of just such a contention as the present, disclosed the widespread fear that the national government might, under the pressure of supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that *if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act.*

“*The people who adopted the Constitution knew that in the nature of things they could not foresee all the questions which might arise in the future, all the circumstances which might call for the exercise of further national powers than those granted to the United States, and, after making provision for an amendment to the Constitution by which any needed additional powers*

would be granted, they reserved to themselves all powers not so delegated."

I come to you from your sister Commonwealth of Massachusetts, now happily again as entirely your sister as she was in the days when your Constitution was adopted. I come with no official message from her and in no representative capacity, save as a citizen may represent the State in which he and his ancestors for generations have been born and spent their lives, and which like other citizens they have helped to build up. But, as a citizen of Massachusetts, I have been nurtured with an abiding faith in the principles of liberty embodied in her Constitution, and especially in that essential condition of free government which is stated thus in her Bill of Rights:—

"In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men."

These words of John Adams are the careful statement of a principle which lies at the foundation of our national polity, and which should be maintained in its integrity.

Nor have I less faith in another fundamental principle which was expressed by Chief Justice Chase in delivering the judgment of the Supreme Court when he said that our Constitution contemplates "an indestructible union of indestructible States." The rights of each must be guarded jealously, and to the revolutionary suggestions of to-day let us oppose as a wall of adamant the never-varying reply: "This is a government of laws and not of men."

The President at Cambridge expressed his surprise "at the curious revival of the doctrine of State's rights." It is not the doctrine of State's rights which the President and Secretary Root have attacked. It is the right of the people of the United States to govern themselves, to change their Constitution when and as they please as that Constitution permits, and until

they change it to have it respected and obeyed by every citizen, and not least by those who, elected to execute the laws, have bound themselves by solemn oath to uphold it. No President, no Cabinet Minister, no Congress, and no Court, perhaps acting by a majority of one, has the right to change it, but all must maintain it. When any such attack on rights, whether belonging to the people as a whole, or to the people in their several States, shall pass unchallenged and unresisted, the end of our experiment in free government is not far distant.

It was Lincoln who said:—

“Those who deny freedom to others deserve it not themselves, and under a just God cannot long retain it.”

We abandoned the great principles upon which our government rests when we conquered the Philippine Republic and elected to hold some eight millions of people as subjects without their consent, unprotected by any constitution. We gave our servants absolute power over these people, and they have tasted its sweets. Our house is “divided against itself”: the absolute power which the President and his advisers have exercised abroad is in sharp contrast with the limited power which they have at home, and the comparison is suggestive. It could not be otherwise. The instances of contempt for constitutional restrictions multiply. The disregard of law everywhere by public officials and private citizens is the most dangerous sign of the times. The counsel and the example of our chief Magistrate and his advisers cannot fail to encourage this evil tendency. The more they are trusted, the greater is the bad effect of their example and the more imperative is the duty of resisting their bad advice. We who meet here to-day to celebrate the adoption of a constitution are commemorating an idle form, if constitutions are not to be respected. Let us, as citizens of our common country, resolve that they shall be obeyed by high and low alike, for only through such obedience can our freedom be preserved. Let us treasure the counsel so recently given at Jamestown by the eminent statesman who now represents England in this country, Mr. Bryce.

“Cherish alike and cherish together liberty and law. They

are always inseparable. Without liberty there is no true law, because law sinks into being merely the will of an arbitrary ruler or a selfish class, and ceases to be the will of the whole community.

“Without law and order there is no true liberty, for anarchy means that the rights of the gentle and the weak are overridden by the violent. In the uses of ordered liberty, with a law gradually remoulded from age to age to suit the changing needs of the people, there has lain, and there will always lie, the progress and the peace both of England and America.”

